

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Washington, D.C.

In the Matter of:

BART ARCONTI, II,

Respondent.

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DOCKET NO. 07-3449-DB

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By Notice dated September 6, 2007 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent BART ARCONTI, II that HUD was proposing his debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for a three-year period from the date of the final determination of this matter. Respondent also was advised in the September 6, 2007, Notice that his proposed debarment was in accordance with the procedures set forth in 24 CFR part 24¹. In addition, the Notice informed Respondent that his proposed debarment was based upon his conviction in the United States District Court for the District of Maryland.

Respondent's conviction followed his guilty plea to the offense of submitting False Statements and Aiding and Abetting in violation of 18 U.S.C. 1001 and 2. The allegations are set out in the indictment handed down against Respondent and in the plea agreement executed by him. In summary, the allegations show that Respondent prepared loan documents which indicated that the borrower was currently employed. In fact, the borrower was not employed. Similarly, the loan documents prepared by Respondent also represented that the borrower had received a monetary gift from his fiancée, when in fact he had not. These false representations and statements were material in HUD's decision

¹ HUD published a final rule on December 27, 2007 (72 FR 73484) that relocated and recodified 24 CFR part 24 as 2 CFR part 2424. HUD's December 27, 2007, rule stated that the rule "adopts, by reference, the baseline provisions of 2 CFR 180 "the government-wide rule published by OMB on August 31, 2005 (70 FR 51863) setting forth guidance for agencies with respect to nonprocurement debarment and suspension. For the convenience of the reader, references herein will be to the government-wide rule codified at 2 CFR part 180.

to insure the loan and in the lender's decision to make the loan to the buyer. As a result of HUD's insuring the loan, HUD suffered a financial loss of \$21,156.00.

For Respondent's conviction on his guilty plea to the charges in the indictment, Respondent was sentenced to probation for three years and ordered to perform 150 hours of community service along with paying a fine of \$11,000.00.

A hearing on Respondent's proposed debarment was held in Washington, D.C. on April 2, 2008, before the Debarring Official's Designee, Mortimer F. Coward. Respondent was present at the hearing along with his attorney, John Gordon, Esq. Amy Brown, Esq. appeared on behalf of HUD. The record was kept open until April 16, 2008, for Respondent to submit further documentation in support of his defense.

Summary

I have decided, pursuant to 2 CFR part 180, to debar Respondent from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government, for a period of three years from the date of issuance of this Determination. My decision is based on the administrative record in this matter, which includes the following information:

- (1) The Notice of Proposed Debarment and Suspension dated September 6, 2007.
- (2) A letter from Respondent to HUD dated October 5, 2007, accompanying a decision of May 15, 2007, from the Maryland Department of Labor, Licensing, and Regulation approving Respondent's application for a mortgage originator license.
- (3) An indictment filed in the United States District Court, District of Maryland, charging Respondent with the commission of a criminal offense.
- (4) The Plea Agreement entered into by Respondent dated March 31, 2005.
- (5) The Judgment in a Criminal Case entered against Respondent on August 31, 2005.
- (6) The Government's Brief in Support of a Three-Year Debarment filed February 27, 2008 (including all attachments and exhibits thereto).
- (7) A letter from Respondent's attorney addressed to the Debarment Docket Clerk, dated March 30, 2008.
- (8) A package of documents filed by Respondent, including a letter dated April 1, 2008, from the Probation Office; correspondence to Respondent and his attorney from the Maryland Department of Labor, Licensing, and Regulation; copies of Respondent's income tax forms; a copy of Respondent's resume; and a letter of commendation dated May 11, 2007.
- (9) A fax from Respondent's attorney to the Debarring Official's Designee dated April 16, 2008, transmitting several documents including evidence of Respondent's full payment of the restitution ordered by the court; evidence of the number of hours Respondent has devoted towards completion of his community service; and evidence of his loan origination activity over the last several years,

- including loans originated since beginning employment in 2005 with his present employer.
- (10) The Government's Post-Hearing Brief in Support of a Three-Year Debarment, filed April 16, 2008.
 - (11) The digital recording of the April 2, 2008, hearing.

HUD's Arguments

HUD argues that Respondent, as a loan officer for an approved FHA lender who originated and assisted homebuyers in obtaining FHA-insured loans, was a participant in covered transactions. Accordingly, pursuant to 2 CFR part 180, Respondent is subject to the debarment regulations. Further, HUD argues that Respondent's conviction for submitting false statements to HUD is cause for debarment under 2 CFR 180.800. HUD notes that by virtue of Respondent's conviction, the Government has met its burden of establishing cause for Respondent's debarment. *See* 2 CFR 180.850 and 855. HUD also argues that Respondent's conviction demonstrates that he lacks the necessary honesty and integrity to do business with the Federal Government. *See* 2 CFR 180.125. HUD states that Respondent has not demonstrated any mitigating factors that could be considered to reduce the proposed three-year debarment. Accordingly, HUD argues that, for the reasons recited here and because of the seriousness of Respondent's wrongdoing, a three-year debarment is warranted to protect HUD and the public interest.

Respondent's Arguments

Respondent takes full responsibility for his actions and admits his wrongdoing, describing it as the "biggest mistake [he] ever made in his adult life [and] a huge error of judgment [that he] deeply regret[s]." Respondent testified that the offense that led to his proposed debarment occurred over eight years ago during a time when he was going through personal difficulties; that prior to the incident he had done over 1,000 FHA loans and since the incident over 50 FHA loans; and that he is still a mortgage originator at this time. Respondent also testified that he has paid the court-imposed fine and performed almost all the community service ordered by the court. Additionally, he has almost completed his probation. Counsel for Respondent argued that in mitigation of Respondent's debarment, the Debarring Official should consider the length of time that has transpired since the incident. Moreover, debarment of Respondent at this time would be punitive, not rehabilitative.

Findings of Fact

1. Respondent was a loan officer for an FHA-approved lender who originated FHA-insured loans.
2. Respondent provided false documents to qualify an unqualified borrower for an FHA-insured loan.
3. Respondent pleaded guilty and was convicted of submitting and aiding and abetting in the submission of false statements.
4. Respondent's action resulted in HUD's suffering a loss of \$21,156.00.

5. Respondent was sentenced to three years' probation and ordered to do 150 hours of community service and pay a fine of \$11,000.00.
6. Respondent has paid the fine and has almost completed his community service and term of probation.
7. Respondent's criminal wrongdoing occurred eight years ago and he has continued working as a loan originator to the present time.
8. Respondent acknowledges his wrongdoing and expresses deep remorse and regret for his actions.

Conclusions

Based on the above Findings of Fact, I have made the following conclusions:

1. Respondent was a participant in a covered transaction as defined in 2 CFR part 180.
2. Respondent's criminal conviction serves as the basis for his debarment.
3. Pursuant to 2 CFR 180.800, a conviction for making false statements, *inter alia*, is a cause for debarment. *See also*, 2 CFR 180.850.
4. Respondent's remorse for his wrongdoing is a mitigating factor in determining the appropriate period of debarment to be imposed.
5. Respondent's actions that led to his criminal conviction raise grave doubts with respect to his business integrity and personal honesty.
6. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs. *See* 2 CFR 180.125.
7. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honesty and integrity.

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 CFR 180.870(b)(2)(i) through (b)(2)(iv), to debar Respondent for a period of three years from the date of this Determination. Respondent's "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

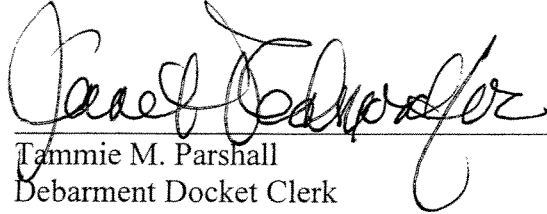
Dated: 6-10-08



Henry S. Czauski
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June 2008, a true copy of the
DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.


Tammie M. Parshall
Debarment Docket Clerk

HAND-CARRIED

Mortimer F. Coward, Esq.
Debarring Official's Designee

Geoff Patton, Esq.
Amy Brown, Esq.
Government Counsel

FIRST CLASS MAIL

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